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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,714	10/06/2003	Aziz Chafic Awad	Healthtreat 4.1-1	2884
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MCLEOD & MOYNE, P.C. 2190 COMMONS PARKWAY OKEMOS, MI 48864				
			EXAMINER THAKUR, VIREN A	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 01/08/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/679,714

Applicant(s)

AWAD, AZIZ CHAFIC

Examiner

Viren Thakur

Art Unit

1794

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 20 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4,6-14 and 16-19.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See continuation sheet, attached.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection under 35 U.S.C. 112, first paragraph regarding the limitation "wherein no sugars are added to the processed food through steps (a) to (e)". As a result of the cancellation of claim 3, the rejection under 35 U.S.C. 112, first paragraph regarding if the aqueous medium consists of yeast extract then the aqueous medium cannot contain any additional components is overcome. The rejection under 35 U.S.C. 112, first paragraph with regard to claim 14 has been overcome as a result of the amendment removing the limitation "during the fermentation."

Continuation of 6. Other: Applicant's arguments regarding the rejection of claims 1-4, 6-14 and 16-19 under 112, first paragraph regarding the limitation "removing the medium and microorganism" and "removing the aqueous medium containing the microorganism" are not persuasive.

Regarding the definition of "aqueous medium" or "aqueous fermentation medium" it is apparent that this limitation is indeed unclear since instant claim 1 added ~~the~~ to the limitation "aqueous medium" the limitation of "containing the microorganism." It is maintained that applicant does not have support for the limitation of the "aqueous medium containing the microorganism."

Applicant points to Example 1 in the specification as support for removing the medium containing the microorganism from the uncooked processed food in the fermenter. It is noted however that the example only states the aqueous medium or aqueous fermentation medium, and does not state that the microorganism is also pumped out of the fermenter. The aqueous fermentation medium can either include the microorganism or exclude the microorganism, but applicant has not provided a clear definition of the aqueous fermentation medium in the specification and thus ~~the~~ cannot limit the claim to also removing the microorganism.

Regarding applicant's assertion that a strainer cannot due to the large pores size retain bacteria is not persuasive. Applicant has not defined the strainer. A strainer is defined as a device for straining, sifting or filtering. As such, the filtration device of Levy could be reasonably interpreted ~~as~~<sup>as</sup> a strainer.

Applicant states on page 14 of the response that Levy's reactor is not capable of performing the intended use of the claimed invention because the fluorocarbon solvent used in Levy's extraction will inactivate the culture. It is noted however, that Levy is being relied on to teach filtration and circulation of an aqueous fermentation medium which reacts with a stationary substrate, such as potatoes.

On page 18 applicant states in examples 1 and 6, the positive addition of the food to be fermented to the fermentation reactor. Claim 1 however does not positively recite addition of food to be fermented. In step a it is recited "...added yeast extract for fermentation by a microorganism for food fermentations containing an uncooked processed food...." Further in step a it is recited "for metabolizing sugars in the uncooked processed food." The limitation "for" describes an intended use. There is not positive addition of food within the method claims.

Regarding blanching, Hilton states on column 2, lines 61-62, that "it is preferred to blanch the potato solids to reduce their tendency to brown enzymatically." This teaches that blanching has been known in the art to reduce browning in potato pieces.

It is noted that the prior art to Hilton, although not explicitly reciting the reduction of acrylamide, achieves this result since Hilton et al. teach that the pre-fermented potatoes have a low tendency to brown during frying. The formation of acrylamide (and browning) is a direct result of the reaction of asparagine (found in potatoes) with reducing sugars. Therefore, since Hilton et al. lower the levels of the reducing sugars, one component of the Maillard reaction equation is minimized, thus also lowering the end result. (i.e. acrylamide levels and browning). It is further noted, in response to applicant's arguments on page 26, that the claims recite a process for reducing the acrylamide levels. Based on the teachings of Hilton et al., the levels of acrylamide in a potato compared to those after the Hilton treatment are considered reduced.

On page 32 applicant states that the Baldwin reference is directed to an enzymatic process and teaches against the use of fermentation by lactic acid or yeast ~~the~~. The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Baldwin teaches that it has been known in the art to use lactic acid bacteria for fermentation which reduces browning.

Applicant is reminded of the after final status of the application.

  
KEITH D. HENDRICKS  
SUPERVISORY PATENT EXAMINER